

1 WILLIAM H. SHIBLEY  
2 California State Bar No. 56093  
3 **LLOYD & MOUSILLI, PLLC**  
4 11807 Westheimer Road  
5 Suite 550 PMB 944  
6 Houston, TX 77077  
7 Tel: (512) 609-0059  
8 Fax: (281) 783-8565  
9 *litigation@lloydmousilli.com*

10 **ATTORNEYS FOR DEFENDANTS**

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **WESTERN DISTRICT**

14 **DAVID HOUGH; et al**

15 *Plaintiffs,*

16 **v.**

17 **RYAN CARROLL; et al**

18 *Defendants.*

Case No.: 2:24-cv-02886

Assigned for all purposes to:  
JUDGE WESLEY L. HSU

**DEFENDANTS RYAN CARROLL;  
MAX K. DAY; MAX O. DAY;  
MICHAEL DAY; YAX  
ECOMMERCE LLC; PRECISION  
TRADING GROUP, LLC; WA  
DISTRIBUTION LLC;  
PROVIDENCE OAK  
PROPERTIES, LLC; WA  
AMAZON SELLER LLC; MKD  
INVESTMENT ADVISOR, LLC;  
MKD FAMILY BENEFICIARY,  
LLC; MKD FAMILY PRIVATE  
MANAGEMENT COMPANY,  
LLC; MAX DAY CONSULTING,  
LLC; HOUTEX FARM EQUITY  
PARTNERS LLC; BUSINESS  
FINANCIAL SOLUTIONS  
ADVISORY LLC; EVO MAXX  
LLC; YAX IP AND  
MANAGEMENT INC. (D.B.A.  
“FULFILLABLE”); WWKB LLC;**

**AND DREAMS TO REALITY  
LLC’S RESPONSE TO  
PLAINTIFFS’ EX PARTE  
MOTION FOR CONTINUANCE**

Action Filed: April 9, 2024  
Trial Date: N/A

**TABLE OF CONTENTS**

MEMORANDUM OF POINTS AND AUTHORITIES ..... - 4 -  
 I. FACTUAL AND PROCEDURAL BACKGROUND..... - 4 -  
 II. ARGUMENT AND AUTHORITIES ..... - 8 -  
 III. CONCLUSION ..... - 14 -  
 CERTIFICATE OF COMPLIANCE ..... - 16 -  
 CERTIFICATE OF SERVICE..... - 16 -

**TABLE OF AUTHORITIES**

**Cases**

*Accord Chamber of Com. of the United States of Am. v. Bonta*, 62 F.4th 473 (9th Cir. 2023)..... - 12 -  
*Apostol v. Gallion*, 870 F.2d 1335 (C.A.7 1989)..... - 11 -  
*Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126 (9th Cir. 2000) ..... - 10 -  
*Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023)..... - 11 -, - 13 -  
*Forest Oil Corp. v. McAllen*, 268 S.W.3d 51 (Tex. 2008) ..... - 10 -  
*Halliburton Energy Servs., Inc. v. Ironshore Specialty Ins. Co.*, 921 F.3d 522 (5th Cir. 2019)..... - 10 -  
*Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967) ..... - 12 -  
*Prudential Sec. Inc., v. Marshall*, 909 S.W.2d 896 (Tex. 1995)..... - 11 -  
*Royal Pro. Builders, Inc. v. Roggin*, 853 So. 2d 520 (Fla. Dist. Ct. App. 2003) ... - 11 -  
*Sarah Car Care, Inc. v. LogistiCare Sols., LLC*..... - 13 -  
*Seifert v. U.S. Home Corp.*, 750 So. 2d 633 (Fla. 1999) ..... - 10 -  
*Sonic-Calabassas A, Inc. v. Moreno* (2013) 57 Cal. 4th 1109 ..... - 12 -  
*Wisconsin Public Intervenor v. Mortier*, 501 US 597 (1991) ..... - 12 -  
*Zamudio v. Aerotek, Inc*, No. 121CV01673JLTCDB, 2024 WL 863715 (E.D. Cal. Feb. 28, 2024)..... - 12 -

**Statutes**

9 U.S.C. § 3.....	- 11 -
9 U.S.C. §§2, 4 (FAA).....	- 10 -
TEX. CIV. PRAC. & REM. CODE §§171.001, 171.002, 171.021 (TAA) .....	- 10 -

1 COME NOW SPECIALLY APPEARING DEFENDANTS RYAN  
2 CARROLL; MAX K. DAY; MAX O. DAY; MICHAEL DAY; YAX  
3 ECOMMERCE LLC; PRECISION TRADING GROUP, LLC; WA  
4 DISTRIBUTION LLC; PROVIDENCE OAK PROPERTIES, LLC; WA  
5 AMAZON SELLER LLC; MKD INVESTMENT ADVISOR, LLC; MKD  
6 FAMILY BENEFICIARY, LLC; MKD FAMILY PRIVATE MANAGEMENT  
7 COMPANY, LLC; MAX DAY CONSULTING, LLC; HOUTEX FARM  
8 EQUITY PARTNERS LLC; BUSINESS FINANCIAL SOLUTIONS  
9 ADVISORY LLC; EVO MAXX LLC; YAX IP AND MANAGEMENT INC.  
10 (D.B.A. “FULFILLABLE”); WWKB LLC; and DREAMS TO REALITY LLC  
11 (“Defendants”), and hereby files *Defendants’ Response to Plaintiffs’ Ex Parte*  
12 *Motion for Continuance* (“Response”) and respectfully shows the Court as follows:  
13  
14  
15  
16

17  
18 MEMORANDUM OF POINTS AND AUTHORITIES

19 I. FACTUAL AND PROCEDURAL BACKGROUND

20 1. On April 9, 2024, Plaintiffs filed an *Ex Parte* Application for a Temporary  
21 Restraining Order and an Order to Show Cause regarding a Preliminary Injunction  
22 (“Application”), seeking the extraordinary remedy of a freeze of all of the  
23 Defendants’ assets pre-judgment as well as a disclosure of all their financial  
24 information pre-judgment. *See* Dkt. 9.  
25  
26  
27  
28

1 2. On April 11, 2024, Defendants filed an Opposition to Plaintiffs' Application  
2 (**"Opposition"**) on the grounds that (a) this Court lacked personal jurisdiction over  
3 the Defendants; (b) the case should be compelled to binding arbitration pursuant to  
4 the Plaintiffs' written contracts; (c) Plaintiffs lacked a legal basis to freeze all of the  
5 Defendants' assets; (c) Plaintiffs failed to establish a likelihood of success on the  
6 merits on any of their claims; (d) Plaintiffs' evidence of alleged representations  
7 outside the written contracts constituted inadmissible parol evidence; (e) Plaintiffs  
8 had not established irreparable harm sufficient to grant a mandatory injunction that  
9 went beyond maintaining the status quo; and (f) the balance of the equities did not  
10 tip in Plaintiffs' favor. *See* Dkt. 13.

14 3. On April 12, 2024, Plaintiffs filed a Reply to Defendants' Opposition to  
15 Plaintiffs' Application. *See* Dkt. 15.

17 4. On April 15, 2024, this Court issued a Temporary Restraining Order  
18 (**"TRO"**), holding that (a) the Court did not have personal jurisdiction over any of  
19 the Defendants apart from the Defendants Ryan Carroll; Max O. Day; Max K. Day;  
20 Michael Day; Yax Ecommerce LLC; WA Distribution LLC; and Precision Trading  
21 Group, LLC (the **"Jurisdictional Defendants"**) based upon the facts available to  
22 the Court at the present time; (b) that the Jurisdictional Defendants were ordered to  
23 appear at an OSC on April 19, 2024 regarding why a preliminary injunction (**"PI"**)  
24 should not issue prohibiting them from withdrawing, transferring, spending, or  
25 otherwise disposing of any assets held by or for the benefit of Jurisdictional  
26  
27  
28

1 Defendants until the close of this proceeding, except that each human Defendant  
2 would be allowed to spend \$9,000 per month and have the ability to seek leave of  
3 Court for additional expenditures; and (c) ordering the Jurisdictional Defendants to  
4 identify account information for all accounts that contain assets held by or for the  
5 benefit of the Jurisdictional Defendants. *See* Dkt. 17.  
6

7  
8 5. At the hearing on April 19, 2024, the Jurisdictional Defendants' counsel  
9 requested that this court (a) continue the hearing on the Application to allow for  
10 supplemental briefing on the issues of the asset freeze and the financial disclosures;  
11 (b) increase the monthly spending limit in the TRO for the individual Defendants to  
12 \$13,000 per month; (c) include a provision in the TRO allowing the Jurisdictional  
13 Defendants to pay their attorney's fees. The Court agreed with the Jurisdictional  
14 Defendants' arguments in this regard and (a) set a continued hearing for April 29,  
15 2024; (b) set a supplemental briefing schedule for that hearing; and (c) issued a  
16 Minute Order reflecting the changes to the TRO. *See* Dkt. 21.  
17  
18

19  
20 6. On April 25, 2024, Plaintiffs filed their *Ex Parte* Motion for Expedited  
21 Briefing and Motion for Leave to Conduct Expedited Discovery ("**Discovery**  
22 **Motion**"). *See* Dkt. 25.  
23

24 7. On April 26, 2024, the Jurisdictional Defendants filed a Supplemental Brief in  
25 Opposition to Plaintiffs' Application ("**Supplemental Brief**") in accordance with  
26 the Court's Minute Order, addressing the harm that would be suffered by the  
27  
28

1 Jurisdictional Defendants if the TRO becomes a preliminary injunction and other  
2 matters. *See* Dkt. 31.

3  
4 8. On April 29, 2024, the Jurisdictional Defendants filed their Opposition to the  
5 Plaintiffs' Discovery Motion. *See* Dkt. 36.

6 9. On April 30, 2024, the Jurisdictional Defendants filed a Motion to Compel  
7 Arbitration and a Motion to Stay based upon the fact that all Plaintiffs' contracts  
8 with Wealth Assistants contained broad arbitration clauses by which Plaintiffs  
9 agreed to arbitrate all of their claims herein. *See* Dkt. 39. This matter is set for  
10 hearing on June 7, 2024. *Id.*

11  
12  
13 10. On April 30, 2024, Defendants also filed a Motion to Dismiss Plaintiffs'  
14 claims based upon Rule 12(b)(2) and Rule 12(b)(6). *See* Dkt. 40. This matter is also  
15 set for hearing on June 7, 2024. *Id.*

16  
17 11. On April 30, 2024, following a hearing on this matter, the Court issued a  
18 Minute Order Extending and Amending the TRO ("**Amended TRO**") and granting  
19 Plaintiffs' Motion for Leave to Conduct Expedited Discovery. *See* Dkt. 38. In its  
20 April 30 Minute Order, the Court held that "assets owned by or held for the benefit  
21 of Defendants' is confirmed to mean 'any assets over which the Jurisdictional  
22 Defendants have dominion and control'"; and set a continued hearing for May 13,  
23 2024. *Id.*

24  
25  
26 12. On May 13, 2024, the Court issued an Order Discharging the Order to Show  
27 Cause and Granting a Preliminary Injunction Freezing Assets. *See* Dkt. 49.  
28

1 13. On May 15, 2024, Plaintiffs filed their third *ex parte* motion, this time an *Ex*  
2 *Parte* Motion to Continue the hearing on Defendants' Motion to Compel  
3 Arbitration and Motion to Dismiss ("**Motion**"). *See* Dkt. 52. Plaintiffs' Motion is  
4 completely without merit and is merely a transparent stall tactic to avoid the clear  
5 arbitration clauses in their contracts with Wealth Assistants. There is no valid basis  
6 to continue these hearings, thus the Motion should be denied.  
7  
8

## 9 II. ARGUMENT AND AUTHORITIES

10  
11 14. As a preliminary matter, Plaintiffs counsel has now filed a third *ex parte*  
12 hearing and is currently threatening Defendants with a fourth. *Ex parte* hearings are  
13 meant to address true emergencies not to needlessly burden the Court, Defendants,  
14 and their counsel on a weekly basis with new complaints. Defendants consider the  
15 continual threats of a numerosity of *ex parte* hearings to be an abuse of the *ex parte*  
16 process.  
17  
18

19 15. Nevertheless, Plaintiffs' Motion is meritless. Shortly before filing the Motion,  
20 Plaintiffs' counsel informed Defendants' counsel that he wished to turn this  
21 litigation into a class action. This is unsurprising as Plaintiffs' counsel has now  
22 found a favorable forum after thorough forum shopping in state court and various  
23 arbitration forums. However, it is not a valid reason to continue the current hearing  
24 dates. Defendants set their hearings more than twenty-eight (28) days out, even  
25 though they will suffer great harm by waiting for these hearing dates due to the  
26  
27  
28



1 numerous *ex parte* filings of Plaintiffs' counsel and the associated emergency  
2 orders therewith. Defendants will be substantially prejudiced if these hearings are  
3 continued out even further.  
4

5 16. Even if Plaintiffs are ultimately successful in certifying a class, it would not  
6 change the merits of the Motion to Compel Arbitration or Motion to Dismiss. Every  
7 single one of Wealth Assistants' clients, including the ones that Plaintiffs' counsel  
8 has mentioned he intends to bring into this litigation signed arbitration agreements.  
9

10 All of Wealth Assistants' clients also signed one of two standard contracts, which  
11 are already both represented by the Plaintiffs in this case. Thus, the analysis of the  
12 issues on the Motion to Compel Arbitration and the Motion to Dismiss would  
13 remain identical. Even if Plaintiffs amend their pleading, Defendants would urge  
14 the Court to apply the prior Motion to Dismiss to the amended pleading in  
15 accordance with federal law.  
16  
17

18 17. Plaintiffs' counsel, Nico Banks ("**Mr. Banks**") is well aware of these facts as  
19 he represents plaintiffs with identical claims against Wealth Assistants in nearly a  
20 dozen different forums, including a mass arbitration (*Individual Claimants vs. Yax*  
21 *Ecommerce* (hereinafter "**Mass Arbitration**"). The same day this Motion was filed,  
22 Mr. Banks did advise the American Arbitration Association ("**AAA**") that he was  
23 withdrawing his claims with respect to four California claimants in the Mass  
24 Arbitration, presumably so he could bring them into this more favorable forum.  
25  
26 However, Mr. Banks has no valid basis to do so and Respondent has objected to  
27  
28

1 such withdrawal. Mr. Banks alleges that this is being done pursuant to California  
2 Code of Civil Procedure § 1281.97, which permits withdrawal from arbitration in  
3 favor of litigation if a respondent has not paid the arbitration fees. However, Wealth  
4 Assistants has timely paid all fees requested by AAA in the Mass Arbitration and all  
5 other arbitrations instituted by Mr. Banks.  
6

7  
8 18. Per the correspondence sent by AAA, Wealth Assistants' fees were due on  
9 May 9, 2024.<sup>1</sup> Wealth Assistants' counsel began requesting a payment link for a  
10 credit card/wire transfer on May 5, 2024 and followed up many times without  
11 response from AAA.<sup>2</sup> After calling on May 9, 2024 and leaving a voicemail  
12 because an out of town response was received from the case manager to the May 9,  
13 2024 email, Wealth Assistants' counsel subsequently spoke to the AAA Mass  
14 Arbitration Intake Team three separate times before finally receiving the correct  
15 link for wire transfers payment of the \$8,125 fee. *Id.* Due to the delay in receiving  
16 proper payment instructions from AAA, Wealth Assistants paid the \$8,125 timely  
17 via wire transfer the morning of May 10, 2024, which AAA accepted.<sup>3</sup> The delay of  
18 less than 9 hours was de minimis and was not due to any fault of Wealth Assistants.  
19  
20 Claimants have suffered no prejudice from this minor delay and claimants are  
21 continuing to pursue the Mass Arbitration for non-California residents. Thus, there  
22  
23  
24  
25

26  
27 <sup>1</sup> See **Exhibit A**, Letter from AAA dated April 26, 2024.

28 <sup>2</sup> See **Exhibit B**, Correspondence with AAA from May 5, 2024 to May 9, 2024.

<sup>3</sup> See **Exhibit C**, Email correspondence from AAA dated May 10, 2024.

1 is no valid basis for the claimants in the Mass Arbitration nor any other claimant or  
2 plaintiff to avoid their mandatory arbitration clauses with Wealth Assistants.

3  
4 19. Here, as set forth in the Jurisdictional Defendants' Motion to Compel  
5 Arbitration, the FAA applies. *See* Dkt. 39 at pp. 8-9. The FAA reflects a strong  
6 federal policy toward resolving disputed arbitrable issues through arbitration;  
7 indeed, "any doubts concerning the scope of arbitrable issues should be resolved in  
8 favor of arbitration, whether the problem at hand is the construction of the language  
9 itself or an allegation of waiver, delay, or a likely defense to arbitrability." *Moses H.*  
10 *Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983).  
11

12  
13 20. Under the FAA, Texas and Florida law, once a party seeking to compel  
14 arbitration establishes that (1) there is a valid agreement to arbitrate and (2) that the  
15 claims raised are within the agreement's scope, then the trial court must compel  
16 arbitration. *See* 9 U.S.C. §§2, 4 (FAA); TEX. CIV. PRAC. & REM. CODE §§171.001,  
17 171.002, 171.021 (TAA); *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d  
18 1126, 1130 (9th Cir. 2000) (the court's role is limited to determining whether a valid  
19 arbitration agreement covering the claims exists); *Halliburton Energy Servs., Inc. v.*  
20 *Ironshore Specialty Ins. Co.*, 921 F.3d 522, 530 (5th Cir. 2019); *Forest Oil Corp. v.*  
21 *McAllen*, 268 S.W.3d 51, 56 (Tex. 2008); *Seifert v. U.S. Home Corp.*, 750 So. 2d  
22 633, 636 (Fla. 1999).  
23

24  
25 21. The policy in favor of enforcing arbitration agreements is so compelling that a  
26 court should not deny arbitration "unless it can be said with positive assurance that  
27  
28

1 an arbitration clause is not susceptible of an interpretation which would cover the  
2 dispute at issue.” *Prudential Sec. Inc., v. Marshall*, 909 S.W.2d 896, 898-99 (Tex.  
3 1995); *Accord Downs*, 248 Cal. App. at 185; *Royal Pro. Builders, Inc. v. Roggin*,  
4 853 So. 2d 520, 523 (Fla. Dist. Ct. App. 2003).

6 22. A stay of litigation pending the conclusion of arbitration is mandatory in any  
7 case raising a dispute referable to arbitration under the FAA. 9 U.S.C. § 3; *See also*  
8 *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 22.

10 23. In *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 743 (2023), the Supreme Court in  
11 holding that the FAA requires district courts to stay proceedings even during the  
12 interlocutory appeal of an order denying a motion to compel arbitration, stated that  
13 the right to the interlocutory appeal “would be largely nullified” absent a stay.  
14 (*Coinbase, Inc.*, 599 U.S. at 743.) The Supreme Court held that if the parties were  
15 forced to continue to litigate in the lower court, “many of the asserted benefits of  
16 arbitration (efficiency, less expense, less intrusive discovery, and the like) would be  
17 irretrievably lost—even if the court of appeals later concluded that the case actually  
18 had belonged in arbitration all along.” *Id.* In other words, the value of arbitration is  
19 totally undercut if court litigation proceeds and a higher court ultimately determines  
20 that the motion to compel arbitration was improperly denied. (*See Apostol v.*  
21 *Gallion*, 870 F.2d 1335, 1338 (C.A.7 1989) [“[i]t makes no sense for trial to go  
22 forward while the court of appeals cogitates on whether there should be one.”].)  
23  
24  
25  
26  
27  
28

1 24. If Plaintiffs are permitted to unlawfully continue the hearing on the Motion to  
2 Compel Arbitration while Plaintiffs' counsel seeks to certify a class and  
3 undoubtedly conduct yet more expedited discovery in the process, the value of  
4 arbitration in reducing the expense of discovery and quickly resolving claims would  
5 be totally undercut and much of the benefits of arbitration would be lost in violation  
6 of *Coinbase* and California law.  
7

9 25. As federal substantive law, the FAA preempts contrary state law. *See Prima*  
10 *Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 400 (1967). The FAA  
11 preempts any state law that restricts the right to arbitrate. *See Sonic-Calabassas A,*  
12 *Inc. v. Moreno* (2013) 57 Cal. 4th 1109, 1144 (“a state-law rule is preempted [by  
13 the FAA] when its impact is such that it interferes with fundamental attributes of  
14 arbitration”); *Accord Chamber of Com. of the United States of Am. v. Bonta*, 62  
15 F.4th 473, 486 (9th Cir. 2023).  
16

18 26. In the context of stays pending resolution of a motion to compel arbitration,  
19 courts find that the prejudice of delay “is outweighed by the potential prejudice that  
20 would result from further litigation of claims which may ultimately be subject to  
21 arbitration.” *Zamudio v. Aerotek, Inc*, No. 121CV01673JLTCDB, 2024 WL 863715,  
22 at \*3 (E.D. Cal. Feb. 28, 2024) (collecting cases). This continuance “stands as an  
23 obstacle to the accomplishment and execution of the full purposes and objectives of  
24 Congress.” (*Wisconsin Public Intervenor v. Mortier*, 501 US 597, 605 (1991)).  
25  
26  
27  
28

1 27. In *Sarah Car Care, Inc. v. LogistiCare Sols., LLC*, the 3rd Circuit held that  
2 allowing discovery to proceed would “erase the ‘benefits of arbitration’ such as  
3 ‘efficiency, less expense, less intrusive discovery, and the like’.” No. 21-3108, 2023  
4 WL 5378845, at \*1 (3d Cir. Aug. 22, 2023) (*Citing Coinbase*, 599 U.S. at 743). The  
5 continuance of these hearings, which would allow Plaintiffs to file numerous  
6 additional *ex parte* motions seeking further orders from the Court in the interim and  
7 conducting class-discovery and other discovery law and motion practice would  
8 certainly erase the majority, if not all, of the benefits of arbitration.  
9

10  
11 28. Defendants, unlike Plaintiffs, have tried to avoid unnecessary *ex parte* filings  
12 and have set their motions for regularly noticed dates, but if this Motion is granted,  
13 Defendants will be forced to file for an *ex parte* stay of these proceedings until the  
14 Motion to Compel Arbitration is resolved.  
15  
16

17 29. Thus, the Defendants respectfully request that the Court deny Plaintiffs’  
18 Motion for a Continuance.  
19

### 20 III. CONCLUSION

21  
22 30. Based on the foregoing and for good cause shown, Defendants respectfully  
23 requests that this Court deny Plaintiffs’ *Ex Parte* Motion for Continuance and for  
24 such other and further relief to which the Defendants may show themselves to be  
25 justly entitled.  
26

27 Dated: May 17, 2024.

Respectfully submitted,

By: /s/ William H. Shibley  
William H. Shibley

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Defendants, certifies that this Motion contains 2,606 words, which complies with the word limit of L.R. 11-6.1

/s/ William H. Shibley  
William H. Shibley

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document, and any attachments, will be served to counsel of record, in accordance with the governing rules of procedure regarding service in this court on this **May 17, 2024**, via email as follows:

/s/ William H. Shibley  
William H. Shibley